

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SANDRA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-0918-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for a period of disability and disability insurance benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1960,<sup>1</sup> has a high school education, and previously worked as, among other things, a salad maker, sales-service promoter, checker, and case aide. (AR 32-33.) Plaintiff applied for a period of disability and DIB on March 29, 2017. (AR 21.) That application

---

<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 was denied initially and upon reconsideration, and Plaintiff timely requested a hearing. (*Id.*) On  
2 November 20, 2018 and May 20, 2019, ALJ Larry Kennedy held hearings, taking testimony from  
3 Plaintiff and a vocational expert. (AR 48-119.) On July 1, 2019, the ALJ issued a decision finding  
4 Plaintiff not disabled. (AR 18-40.) Plaintiff timely appealed. The Appeals Council denied  
5 Plaintiff's request for review (AR 1-7), making the ALJ's decision the final decision of the  
6 Commissioner. Plaintiff now seeks judicial review.

### 7 **JURISDICTION**

8 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 9 **DISCUSSION**

10 The Commissioner follows a five-step sequential evaluation process for determining  
11 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
12 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not  
13 engaged in substantial gainful activity since January 21, 2014, the alleged onset date. (AR 23.) At  
14 step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ  
15 found severe Plaintiff's degenerative disc disease, fibromyalgia, migraine headaches, irritable  
16 bowel syndrome, and obesity. (AR 24.) Step three asks whether a claimant's impairments meet or  
17 equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or equal the  
18 criteria of a listed impairment. (AR 26.)

19 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
20 residual functional capacity (RFC) and determine at step four whether the claimant has  
21 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
22 performing medium work, except she may only occasionally climb ladders, ropes, or scaffolds,  
23 and must avoid concentrated exposure to hazards and heights. (AR 27.) With that assessment, and

1 with the assistance of the VE, the ALJ found Plaintiff able to perform past relevant work as a salad  
2 maker, sales-service promoter, checker, and case aide. The ALJ also proceeded in the alternative  
3 to step five of the sequential evaluation, finding plaintiff able to perform jobs existing in significant  
4 numbers in the national economy consisting of laundry laborer, hand packager, and industrial  
5 cleaner (AR 32-34.) The ALJ concluded Plaintiff was not disabled at any time from January 21,  
6 2014 through the date of decision. (AR 34.)

7 This Court's review of the ALJ's decision is limited to whether the decision is in  
8 accordance with the law and the findings supported by substantial evidence in the record as a  
9 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
10 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
11 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
12 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
13 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
14 2002).

15 Plaintiff argues the ALJ erred by failing to provide legally sufficient reasons for  
16 discounting the opinion of Plaintiff's naturopathic doctor and for discounting her testimony.  
17 Plaintiff also argues that medical evidence produced after the ALJ rendered his decision warrants  
18 remand. The Commissioner argues that the ALJ's decision is supported by substantial evidence  
19 and should be affirmed.

20 Kevin Shaw, N.D.

21 Plaintiff argues the ALJ erred by rejecting postural and environmental limitations assessed  
22 by naturopathic doctor Kevin Shaw<sup>2</sup>. Plaintiff describes Mr. Shaw as her primary treatment  
23

---

<sup>2</sup> The Court adopts Plaintiff's reference to Kevin Shaw, N.D. as "Mr. Shaw". (Dkt. 21 at 7, fn1.)

1 provider (Dkt. 21-7.) In his medical source statement, Mr. Shaw described specific limitations in  
2 plaintiff's use of her feet and hands, and postural and environmental limitations. (AR 753-754.)

3 In considering Mr. Shaw's opinion, the ALJ agreed plaintiff "requires postural limitations".  
4 (AR 30.) Plaintiff, however, argues the limitations imposed by the ALJ consisting of "only  
5 occasionally climb ladders, ropes, or scaffolds, and must avoid concentrated exposure to hazards  
6 and heights" (AR 27) do not address Mr. Shaw's restriction against balancing, stooping, kneeling,  
7 crouching and crawling. (AR 754.) Furthermore, Mr. Shaw imposed environmental limitations  
8 ranging from a complete prohibition on exposure to unprotected heights, various pulmonary  
9 irritants, extreme cold or heat or vibrations, as well as only occasional exposure to moving  
10 mechanical parts, operating a motor vehicle, and humidity and wetness, as well as only moderate  
11 noise. (AR 755.) The ALJ, however, neither rejected nor adopted these restrictions, stated only  
12 that "the assessed environmental limitations adequately account for possible medication side  
13 effects, such as drowsiness, as well as the claimant's migraine headaches, associated with  
14 disorientation."

15 The Court agrees the ALJ's explanation of the weight given the functional limitations  
16 assessed by Mr. Shaw is insufficient. "The ALJ must consider all medical opinion evidence. 20  
17 C.F.R. § 404.1527(b)." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). *See also*, SSR  
18 96-8p ("If the RFC assessment conflicts with an opinion from a medical source, the adjudicator  
19 must explain why the opinion was not adopted.") The Commissioner argues any error in the ALJ's  
20 consideration of Mr. Shaw's postural and environmental restrictions would be harmless, since  
21 none of the restricted activities are required for either plaintiff's past relevant work or the jobs  
22 found appropriate at step five. In this instance, the Court finds it more appropriate for the ALJ to  
23 make that determination after re-evaluating the medical opinion evidence as described. On remand,

1 the ALJ should reconsider and provide legally sufficient reasons for the weight given the opinions  
2 of Mr. Shaw.<sup>3</sup>

3 Plaintiff's Testimony

4 Where, as here, an ALJ determines a claimant has presented objective medical evidence  
5 establishing underlying impairments that could cause the symptoms alleged, and there is no  
6 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to  
7 symptom severity by providing "specific, clear, and convincing" reasons supported by substantial  
8 evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). The ALJ may discount Plaintiff's  
9 testimony based upon inconsistencies in her testimony or between her testimony and her activities  
10 and the medical record concerning the severity of the symptoms of which Plaintiff  
11 complains. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 (9th Cir. 1996).

12 The ALJ found plaintiff's testimony that she is unable to sustain work activity inconsistent  
13 with her self-reported daily activities and medical history. The ALJ pointed to her part time work  
14 as a chef at a local college, typically working up to six hours per day, and a side job doing catering  
15 on weekends. The ALJ also noted plaintiff's testimony that she drove to Portland with her husband  
16 for a vacation, together with activities of personal care, driving a car, shopping, preparing meals,  
17 performing some gardening and light chores. (AR 29.) The ALJ also seemed to find inconsistent  
18 plaintiff testimony that she suffers debilitating pain while opting to conservatively manage her  
19 symptoms with natural treatments and physical therapy, and avoiding pain medication other than  
20 CBD creams and oils. (*Id.*)

21 The ALJ's reconsideration of Dr. Shaw's opinions on remand may also implicate the  
22

23 

---

<sup>3</sup> Plaintiff asserts the Administrative Record contains an incomplete copy of Mr. Shaw's medical source statement. On remand, the ALJ should assure the record includes the complete report.

1 assessment of plaintiff's report of subjective symptoms. The Court finds unpersuasive the ALJ's  
2 apparent connection between the plaintiff's choice of naturopathic treatment and her reports of  
3 debilitating pain. If the ALJ continues to find plaintiff's reported activities inconsistent with her  
4 reported symptoms, the ALJ should explain with specificity the basis for that finding.

5 New Evidence

6 Because remand for further proceedings is necessary, the Court need not address plaintiff's  
7 contention that a post-hearing MRI report is material evidence requiring remand.

8 CONCLUSION

9 For the foregoing reasons, this matter is REVERSED and this case is REMANDED for  
10 further administrative proceedings.

11 DATED this 1st day of March, 2021.

12  
13 

14 Mary Alice Theiler  
United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23